BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

Resolution Approving the City Manager Employment Agreement

RESOLUTION 2008-046

WHEREAS, the City of Lafayette entered into a City Manager Employment Agreement with Steven Falk ("Agreement") on October 15, 1996 as provided by Lafayette Municipal Code, Title 2, Chapter 2-2;

WHEREAS, the Agreement was amended on March 23, 1998, October 15, 1999, June 30, 2002, and June 30, 2005;

WHEREAS, the Lafayette City Council desires to amend and extend the terms of the Agreement.

NOW, THEREFORE, BE IT RESOLVED:

1. That the parties agree to the terms and conditions written in the attached Agreement and which, among other things, define and control the City Manager's duties, term of employment, leave, severance pay, termination, disability, salary, performance evaluation, automobile allowance, sick leave, vacation, and holidays, fringe benefits, retirement contributions, and housing assistance.

2. The Mayor is authorized to sign the attached Agreement.

PASSED AND ADOPTED by the City Council of the City of Lafayette on November 10, 2008 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Michael Anderson, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk

CITY OF LAFAYETTE
CITY MANAGER
EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this 15th day of October, 1996 and amended on March 23, 1998, October 15, 1999, June 30, 2002, June 30, 2005, and June 30, 2008 by and between the City of Lafayette, State of California, a municipal corporation, hereinafter called "Employer," as party of the first part, and Steven B. Falk, hereinafter called "Employee," as party of the second part, both of whom understand as follows:

WITNESSETH;

WHEREAS, Employer desires to employ the services of said Steven B. Falk as City Manager of the City of Lafayette, as provided by Lafayette Municipal Code, Title 2, Chapter 2-2; and

WHEREAS, it is the desire of the City of Lafayette Governing Board, hereinafter called "Council," to provide certain benefits, establish certain conditions of employment and to set working conditions of said Employee; and

WHEREAS, it is the desire of the Council to (1) retain the services of Employee and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Employee and (4) to provide a just means for terminating Employee's services at such time as he may be unable to fully discharge his duties due to disability or when Employer may otherwise desire to terminate his employ; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1) DUTIES. Employer hereby agrees to employ Steven B. Falk as City Manager of said Employer to perform the functions and duties specified in said Lafayette Municipal Code, and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign. Employee shall have no outside employment without the consent of the Council, which consent shall not be unreasonably withheld.

2) EFFECTIVE DATE AND TERM.

   a) The effective date of this Agreement shall be July 1, 2005. This Agreement shall be in effect for a period of three (3) years. Employer may terminate Employee with or without cause at any time during the pendency of this Agreement but if such termination is without cause then Employer shall pay Employee severance pay as set forth in Section 4 of this Agreement.

b) Subject to Employer's right to terminate Employee's employment at any time, the term of this Agreement is three (3) years from the effective date, and shall automatically renew itself for successive eighteen (18) month periods, so that eighteen (18) months always remains on the term of the Agreement, unless Employer notifies Employee of its intent to terminate this Agreement at least eighteen (18) months prior to the end of its three (3) year term or any successive eighteen (18) month term. Employer shall review and renegotiate this Agreement prior to the third anniversary of the effective date of this Agreement.

c) Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with Employer, subject only to the provisions set forth in this Agreement.

3) ADMINISTRATIVE LEAVE. Employer may place the Employee on administrative leave with full pay and benefits at any time during the term of this Agreement. Employer shall give written notice of such placement including the reasons therefor.

4) TERMINATION AND SEVERANCE PAY.

i) In the event Employee is terminated by the Council, or if the Council requests that the Employee resign during such time that Employee is willing and able to perform his duties under this Agreement, Employer agrees to pay Employee's salary and benefits equivalent to eighteen (18) months plus any and all accrued leave; provided, however, that in the event Employee is terminated because of his conviction of any felony or for willful misconduct in office, due to a reasonable determination of the Council, based on the weight of the evidence produced at a hearing conducted by the Council, then, in that event, Employer shall have no obligation to pay the severance designated in this paragraph. Employee agrees that in the event Employee's "at will" employment status is terminated, with or without cause, under no circumstances will Employee be entitled to contest the existence or nature of Employee's "at will" employment status, nor will Employee be entitled to seek or receive the remedy of reinstatement to employment with the Employer in any administrative or legal forum. Employee agrees that the sole issue for resolution upon termination of Employee's employment will be whether or not Employer is obligated to pay to Employee the severance designated in this paragraph.

ii) In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, then, in that event, Employee may, at his option, be deemed to be "terminated" at the date of such reduction or such refusal to comply, and the severance pay provision shall be in effect.

iii) If at any time during the term of this Agreement, Employee's salary or other financial

benefits are reduced by a government agency other than Employer, Employer and Employee shall meet and confer to restore the lost salary and/or benefits, as permitted by law.

iv) In the event Employee voluntarily resigns his position with Employer before expiration of the aforesaid term of his employment, then Employee shall give Employer forty five (45) calendar days written notice in advance of the effective date.

5) DISABILITY. If Employee is permanently disabled and cannot be reasonably accommodated, or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health for a period of two months beyond any accrued leave, Employer shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 4. However, Employee shall also be compensated for any accrued vacation, holidays, and other accrued benefits.

Following expiration of severance pay resulting from termination due to disability, Employer will continue to provide the same health benefits provided to other employees at Employer's cost for twelve months or until Employee finds other employment, whichever occurs first.

In the event that the sickness, accident, injury, mental incapacity or health condition is determined to be work related, then the benefits under the workers compensation laws shall also apply.

6) SALARY.

i) Employer agrees to pay Employee for his services at an annual base salary which shall be determined annually by the City Council and established by resolution.

ii) Employer may otherwise, in its sole discretion, increase said base salary and/or other benefits of Employee in such amounts and to such extent as the Council may determine is desirable.

7) PERFORMANCE EVALUATION. The Employee will provide evaluation forms to the Mayor on or about May 1 of each calendar year. The Council shall review and evaluate the performance of the Employee at least once annually by June 30. Said review and evaluation shall be in accordance with specific criteria developed by Employer. Said criteria may be added to or deleted from as the Council may from time to time determine. Further, the Mayor shall provide the Employee with a summary written statement of the findings of the Council and provide an adequate opportunity for the Employee to discuss his evaluation with the Council.

~~8)~~ CONTINGENT BONUS. The Council may, at its sole discretion, grant the employee a annual bonus payment of up to 10 percent of the Employee's annual base salary. Such bonus, if granted either in whole or in part, shall reflect performance by the Employee that

exceeds expectations.

9) AUTOMOBILE. Employee's duties require that he use a vehicle for a wide variety of professional purposes, including attending meetings, visiting residents and businesses, transporting Employees, associates, and Councilmembers, and responding to emergencies during regular and non-regular work hours. Employer shall thus lease a vehicle of the employee's choice, provided that sales price used to calculate vehicle lease does not exceed $40,000 for business use and the exclusive and unrestricted personal use of the Employee and his spouse. Employer shall pay 65% and Employee shall pay 35% of all costs associated with the lease, liability, property damage, and comprehensive insurance coverages, and for the gasoline, operation, maintenance, and repair of the vehicle. Employee shall have option to purchase vehicle at end of lease provided that such purchase results in no additional cost or liability to City.

10) SICK LEAVE, VACATION, AND HOLDAYS.

i) Employee shall be granted 25 vacation days per year.

ii) Employee shall be granted the same sick and executive leave as other management Employees.

iii) Employee shall be granted the same holidays as regular employees of the Employer.

iv) Upon completion of the full term of this contract, Employee shall be entitled to a paid sabbatical (extended leave) of three weeks. Employee may opt to convert this benefit to cash at the current base rate of pay at the time he exercises this option, which option to convert must be exercised within one calendar year of the date it is granted.

v) The maximum accrual of vacation time for Employee shall not exceed three times the annual amount of vacation earned.

11) FRINGE BENEFITS. Employee shall receive the same benefit package as other regular management employees of the Employer except as otherwise noted herein.

12) RETIREMENT. In lieu of participation in the retirement plan afforded regular employees of the Employer, Employer shall contribute the equivalent of 10% of Employee's base salary to an "Executive 401" retirement plan. In addition to said contribution, Employer shall contribute the equivalent of an additional 5% of base salary provided that Employee also contributes 5% of Employee's base salary to the retirement plan.

13) DUES AND SUBSCRIPTIONS. Subject to budgetary approval by the Employer, Employer agrees to pay for the professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the Employer, provided, however, that no such

organization or association may discriminate on the basis of race, religion, sex, sexual orientation, national origin or other unlawful basis.

14) PROFESSIONAL DEVELOPMENT

a) Subject to budgetary approval by Employer, Employer hereby agrees to pay the travel and subsistence expenses of Employee, in an amount to be set annually by the City Council, for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for Employer, including, but not limited to, the Annual Conference of the International City Management Association, the state league of municipalities, and such other national, regional, state and local governmental groups and committees thereof which Employee serves as a member.

b) Employer also agrees to budget and to pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the Employer.

15) GENERAL EXPENSES. Employer recognizes that certain expenses of a non-personal and job-affiliated nature are incurred by Employee, and hereby agrees, subject to budgetary approval, to reimburse or to pay said general expenses, and the Finance Department is hereby authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

16) HOUSING. Employee shall make his permanent residence within four (4) air miles of the intersection of Moraga Road and Mt. Diablo Boulevard.

17) SHARED EQUITY TRANSFER. In 1997, Employer acquired a $100,000, or 23.5%, equity interest in the Employee's residence located at 1008 Windsor Drive in Lafayette. On December 31, 1999 and each December 31 thereafter during Employee's employment, Employer shall transfer 5% of its equity interest in the Employee's residence to the Employee. This transfer of equity shall take place each year until this Agreement expires, is terminated, or until December 31, 2018, at which point the Employer's equity share is reduced to 0%. Taxes and transactions costs associated with the equity transfer, if any, shall be paid by the Employee. Should Employee terminate employment with the City before the equity share is reduced to 0%, Employee shall have 18 months from the date of termination to repay the City the City's share of the outstanding equity.

18) CIVIC CLUB MEMBERSHIP. Employer recognizes the desirability of representation in and before local civic and other organizations, and Employee is authorized to become a member of one such civic club or organization, for which Employer shall pay all expenses, subject to budgetary approval, provided, however, that no such organization or association may discriminate on the basis of race, religion, sex, sexual orientation, national origin or other unlawful basis.

19) INDEMNIFICATION. Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager, excluding occurrences arising in whole or in part out of the Employee's obtaining remuneration or financial gain to which the Employee was not legally entitled, or arising out of the willful violation of a penal code or ordinance committed by or with the knowledge of the Employee. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

20) BONDING. Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

21) OTHER TERMS AND CONDITIONS OF EMPLOYMENT. The Council, in consultation with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, City ordinances or any other law.

22) NO REDUCTION OF BENEFITS. Except as stated in Section 4, Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such a reduction across-the-board for all regular employees of the Employer.

23) NOTICES. Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

a)	EMPLOYER	Mayor of the City of Lafayette P.O. Box 1968 Lafayette, CA 94549
	with a copy to:	City Attorney
b)	EMPLOYEE:	Steven B. Falk 1008 Windsor Drive Lafayette, CA 94549

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

23) GENERAL PROVISIONS.

a) The text herein shall constitute the entire Agreement between the parties.

b) This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

c) This Agreement shall become effective commencing October 15, 1996, with amendments effective commencing March 23, 1998, October 15, 1999, June 30, 2002, June 30, 2005, and June 30, 2008.

d) If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof; shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Lafayette has caused this Agreement to be signed and executed in its behalf by the Mayor and duly attested by its City Attorney and the Employee has signed and executed this Agreement, in both in duplicate, the day and year first above written.

_____
Michael Anderson, Mayor

_____
Steven B. Falk, City Manager

ATTESTED AND APPROVED AS TO FORM:

_____
Malathy Subramanian, City Attorney